



DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS-2021-0003]

Proposed Revisions to Section 1 of the Field Office Technical Guides for Several States

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture (USDA).

ACTION: Notice of availability; request for comment.

SUMMARY: NRCS is giving notice that it is proposing to revise Section 1 of the Field Office Technical Guides in Alabama, Alaska, Arizona, Arkansas, California, Caribbean Area, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii and Pacific Islands Area, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The proposed changes include hydrology indicators for the identification in each of these States of farmed wetlands (FW) that are not playas, pocosins, or potholes. These indicators will be used by NRCS to identify FWs while completing wetland determinations for USDA program eligibility purposes.

DATES: *Comment Date:* We will consider comments that we receive by **[Insert date 30 days after date of publication in the *FEDERAL REGISTER*]**.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments through the:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for docket ID NRCS-2021-0003. Follow the instructions for submitting comments.
- Mail, or Hand Delivery: Mr. Jason Outlaw, National Leader for Wetland and Highly Erodible Land Conservation, Ecological Sciences Division, NRCS, USDA, 1400 Independence Ave, South Building, Room 4634, Washington, DC 20250. In your comment, specify the docket ID NRCS-2021-0003 and the name of the specific State for which you are submitting comments.

All comments will be available on <http://www.regulations.gov>.

Each State's proposed hydrology indicators for the identification of FWs that are not playas, pocosins, or potholes are available through <http://www.regulations.gov> by accessing Docket No. NRCS-2021-0003. Alternatively, the proposed indicators can be downloaded or printed from

<https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/?cid=NRCS-PRD1792621>. Requests for paper versions or inquiries may be directed to the specific State Conservationist at the contact points listed below.

FOR FURTHER INFORMATION CONTACT: The appropriate NRCS State Conservationist as listed below:

- Alabama: Ben Malone; (334) 887-4500; ben.malone@usda.gov;
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- West Virginia: Jon Bourdon; (304) 284-7540; jon.bourdon@usda.gov;
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- Wyoming: Astrid Martinez; (307) 233-6750; astrid.martinez@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

To participate in most USDA programs, agricultural producers agree to comply with the wetland conservation provisions. This means producers will not farm converted wetlands or convert wetlands to enable agricultural production. One of NRCS' roles is to make wetland determinations that locate and certify the existence of wetlands subject to the Food Security Act of 1985 on producers' land.

This notice announces that NRCS plans to revise Section 1 of the Field Office Technical Guide for the following States: Alabama, Alaska, Arizona, Arkansas, California, Caribbean Area, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii/Pacific Islands Area, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Section 1 of each State's Field Office Technical Guide may be used by NRCS to identify FWs while completing wetland determinations for USDA program eligibility purposes in that particular State. Specifically, the proposed changes will include hydrology indicators to identify FWs that are not playas, pocosins, or potholes.

Each State's proposed hydrology indicators for the identification of FWs that are not playas, pocosins, or potholes are available through <http://www.regulations.gov> by

accessing Docket No. NRCS-2021-0003. Alternatively, the proposed indicators can be downloaded or printed from

<https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/?cid=NRCSSEPRD1792621>. Requests for paper versions or inquiries may be directed to the specific State Conservationist at the contact points listed below.

Proposed Changes to the Field Office Technical Guide

NRCS plans to revise Section 1 of the Field Office Technical Guides for the States of Alabama, Alaska, Arizona, Arkansas, California, Caribbean Area, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii/Pacific Islands Area, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming to include hydrology indicators for the identification of FWs that are not playas, pocosins, or potholes. These indicators will be used by NRCS to identify FWs as part of the technical documents and procedures to conduct wetland determinations on agricultural land for USDA program eligibility purposes as required by law as specified in 16 U.S.C. 3822.

The controlling regulations for the wetland conservation (WC) provisions of the Food Security Act of 1985, as amended, are provided in 7 CFR Part 12, “Highly Erodible Land and Wetland Conservation.” The regulations’ broad definition of “wetland determination” describe an FW (in part) using two criteria. First, an FW is a wetland that prior to December 23, 1985, was manipulated and used to produce an agricultural commodity at least once before December 23, 1985. Second, FWs are described as wetlands that on December 23, 1985, did not support woody vegetation, and met the following hydrologic criteria: If not a playa, pocosin, or pothole, experienced inundation

for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years (50-percent chance or more).

To decide effectively whether an area supports the required inundation for a FW that is not identified as a playa, pocosin, or pothole, the regulations then provide three options:

1. Observation of wetland hydrology indicators as identified in the local NRCS Field Office Technical Guide;
2. Procedures identified in State Off-Site Methods for wetland identification set forth in the local NRCS Field Office Technical Guide; or
3. The use of analytic techniques, such as the use of drainage equations or the evaluation of monitoring data.

The proposed FW hydrology indicators provide those NRCS will use under option one.

On August 28, 2020, USDA published a final rule in the *Federal Register* (85 FR 53137–53152) for the highly erodible land and wetland conservation provisions of the Food Security Act of 1985, as amended. The rule changed how NRCS identifies hydrology criteria for FWs that are not playas, pocosins, or potholes, consistent with the discussion above. Prior to that final rule, the regulations specified that NRCS would identify FWs by using hydrology indicators showing evidence of recent inundation as contained in the applicable regional supplement to the Corps of Engineers Wetland Delineation Manual.

The preamble to the August 28, 2020, final rule provided that until such time as the updates to the NRCS Field Office Technical Guides have been published and public notice provided, NRCS will continue to use Group B (Evidence of Recent Inundation) hydrology indicators from the regional supplements to the Corps of Engineers Wetland Delineation Manual, as specified in the interim rule, published December 7, 2018, in the

Federal Register (83 FR 63046–63052), to identify FWs that are not playas, pocosins, or potholes. Those Group B wetland hydrology indicators currently used by NRCS can be found in the regional supplements to the Corps of Engineers Wetland Delineation Manual at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/. The Corps of Engineers hydrology indicators will no longer be used by NRCS for the identification of FWs that are not playas, pocosins, or potholes once the State-specific NRCS indicators are considered final and published in Section 1 of each State’s Field Office Technical Guide.

Notification and Public Comment

Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 (16 U.S.C. 3862 note) specifies that USDA must allow public notice and comment for revisions to NRCS State technical guides which are used to carry out the Food Security Act of 1985 highly erodible land and wetland conservation provisions (16 U.S.C. 3801–3824).

NRCS will consider all comments that are received during the 30-day comment period. The final version of the Field Office Technical Guide for the States of Alabama, Alaska, Arizona, Arkansas, California, Caribbean Area, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii/Pacific Islands Area, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming as revised to include hydrology indicators for the identification of FWs that are not playas, pocosins, or potholes will be adopted after the close of the 30-day period and after consideration of all comments. Responses to comments will be posted at

<https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/programs/farmbill/?cid=nrc>

seprd1542016 once each State's final version is adopted.

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